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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,660	01/18/2001	Wen Tong	11969ROUS02U	6272
7590	11/03/2005		EXAMINER HSU, ALPUS	
Bruce E. Garlick Garlick & Harrison P.O. Box 691 Spicewood, TX 78669			ART UNIT 2665	PAPER NUMBER

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/764,660	TONG ET AL.
	Examiner Alpus H. Hsu	Art Unit 2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 August 2005.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-7,36,42 and 58-69 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 60-69 is/are allowed.  
 6) Claim(s) 1-7, 36, 42, 58, 59 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-7, 36, 42, 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anders Nystrom et al. in US Patent No. 6, 189, 123 (of record) in view of Izumi et al. in European Patent Application No. EP 0 964 534 A1 (of record).

Regarding claims 1, 36 and 42, Anders Nystrom et al. discloses a method, a base station, and a plurality of software instructions executed by a base station for transmitting an encoded block of digital data, which is comprised of portions of digital data and makes up a transmission set, to a receiver in a first transmission (col. 7, lines 9-24). If a determination is made that the transmission set was not successfully decoded, the receiver makes a request for retransmission (col. 49-62). The same transmission set cannot be retransmitted until another dissimilar set is first transmitted (col. 8, lines 7-9), and any selected portion of any selected one or more encoded versions of the block of symbols may be retransmitted (col. 9, lines 61-64). This meets the

limitation of sending a first block portion of the original transmission set in a retransmission, wherein the original transmission set contained more than one block portion. Anders Nystrom et al. also discloses that the retransmission set may be formed from a second encoded version of the original digital data block (col. 10, lines 53-57), but fails to expressly disclose that the second encoded version is sent at a different transmission data rate, which is well known in the art and commonly used in data communications field for quality assurance purpose. Izumi et al., for example, discloses a scheme of data retransmissions with successively lower transmission rate (abstract, col. 4, line 41 to col. 5, line 15). Therefore, it would have been obvious to a person of ordinary skill at the time the invention was made, to use a different transmission data rate in sending the data retransmission since one of ordinary skill in the art would have been motivated to do this in order to have a better chance of successfully decoding the original digital data block after the retransmission to improve the data quality assurance.

Regarding claims 2-4, Anders Nystrom et al. discloses successively redundant, iterative transmission of addition transmission sets can be performed (col. 7, lines 63-67). Anders Nystrom et al. fails to expressly disclose including in a data retransmission by inserting a different portion of the originally encoded digital data blocks, which would have been obvious to a person of ordinary skill in the art to implement since one of ordinary skill in the art would have been motivated to do this in order to provide additional copies of portions of the data block that were in error, thus resulting in a better chance of successfully decoding the original data block.

Regarding claims 5 and 58, as stated above, Izumi et al. discloses using technique of data retransmissions with successively lower transmission rate.

Regarding claims 6 and 7, Anders Nystrom et al. discloses that the sending station may

be a radio base station while the receiving station may be a mobile terminal, and vice versa (col. 6, lines 52-58).

Regarding claim 59, Anders Nystrom et al. discloses that the data transmission rates are correlated with the application of spreading factors (col. 8, lines 1-31).

4. Claims 60-69 are allowed.

5. Applicant's arguments filed 18 August 2005 have been fully considered but they are not persuasive.

In the remark, the applicant mainly argued that the amended independent claims 1, 36, and 42 include limitations relating to retransmissions having both differing coding rates and data transmission rates. These elements are not taught by the combination of Anders Nystrom et al. in view of Izumi et al.. The examiner disagrees since the limitation of retransmissions having differing coding rates is taught by Anders Nystrom et al. (see col. 9, lines 61-64, col. 10, lines 53-57) and retransmissions having differing data transmission rates is taught by Izumi et al. (see col. 4, line 41 to col. 5, line 15). Therefore, the combination of Anders Nystrom et al. in view of Izumi et al. clearly met all the limitations of the newly amended independent claims. Therefore, the examiner believes that the rejections of claims 1-7, 36, 42, 58 and 59 under 35 U.S.C. 103(a) should be sustained.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alpus H. Hsu whose telephone number is (571)272-3146. The examiner can normally be reached on M-F (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AHH



Alpus H. Hsu  
Primary Examiner  
Art Unit 2665